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MAR 10 2011

In re Application of :
John Browse, et al. :
Application No.09/219,935 :
Filed: December 23, 1998 :
Attorney Docket No. BB1036USCNT :

OFFICE OF PETITIONS

ON PETITION

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed December 21, 2009, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed September 3, 2008, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on November 4, 2008. See MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of \$1,620; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 12/420,395.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats.

1988). Since the \$1,730 extension of time fee submitted with the petition on December 21, 2009 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account. The \$1,620 petition fee that was charged on December 21, 2009 will also be credited to petitioner's deposit account because it was previously paid on April 9, 2009.

Telephone inquiries concerning this decision should be directed to Terri Johnson at (571) 272-2991.

/Terri Johnson/
Terri Johnson
Petitions Examiner
Office of Petitions